

Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CHERYL BISHOP,

Plaintiff,

v.

MONTY WILKINSON, ACTING
ATTORNEY GENERAL, DEPARTMENT
OF JUSTICE, ALCOHOL, TOBACCO,
FIREARMS & EXPLOSIVES,

Defendant.

No. 2:20-CV-01375-RSM

ANSWER

Defendant Monty Wilkinson (“Defendant”), in his official capacity as the
Acting Attorney General of the United States Department of Justice (“DOJ”) answers
the Complaint (Doc. 1) as follows:

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Answer-1
2:20-CV-01375-RSM

U.S. Attorney’s Office
105 E. Pine Street
Missoula, MT 59801
406-542-8851

NATURE OF CASE

1.1 Defendant admits Paragraph 1.1 is Plaintiff's characterization of her claims, but Defendant denies Plaintiff is entitled to any relief based on those claims.

ADMINISTRATIVE EXHAUSTION

2.1 Defendant admits Plaintiff filed a formal individual complaint (ATF-2020-00774) with Defendant more than 180 days ago, that no hearing has been scheduled, no appeal has been filed, and a final action has not been taken. Defendant denies the remaining allegations in paragraph 2.1.

JURISDICTION AND VENUE

3.1 Defendant denies the allegations in paragraph 3.1.

3.2 Defendant denies the allegations in paragraph 3.2.

3.3 Defendant admits the allegations in paragraph 3.3.

PARTIES

4.1 Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 4.1 regarding Plaintiff's residency. Defendant admits Plaintiff is African-American. Defendant admits that from approximately July 2013 to September 3, 2017, Plaintiff was a Special Agent Canine Handler with the Agency, and on September 3, 2017, received a promotion to the position of Group Supervisor.

1 5.5 Defendant admits that Devlin's November 21, 2019 email included
2 recipients outside of the ATF. Defendant denies the remaining allegations in
3 Paragraph 5.5.

4 5.6 Defendant admits that on November 21, 2019, Devlin sent an email using
5 his ATF email account and that the excerpted quotes appear in that e-mail. Defendant
6 admits the *Seattle Times* article (Exhibit B to the Complaint) was attached to the e-
7 mail. Defendant denies the allegations in paragraph 5.6 to the extent Plaintiff has
8 mischaracterized the content of the e-mail. Defendant denies the remaining allegations
9 in Paragraph 5.6.

10 5.7 Defendant lacks knowledge or information sufficient to form a belief
11 about the truth of the first sentence regarding how "the media" obtained Devlin's
12 name, employment, and photograph. Defendant admits Plaintiff's lawyer shared her
13 Complaint with the United States Attorney's Office for the Western District of
14 Washington. Defendant lacks knowledge or information sufficient to form a belief
15 about the truth of the second clause of the second sentence as to the mindset of
16 Plaintiff's lawyer. Defendant denies all remaining allegations in sentence two of
17 Paragraph 5.7. Defendant admits the allegations in sentences three and four of
18 Paragraph 5.7. Defendant lacks knowledge or information sufficient to form a belief
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1 about the truth of the fifth sentence in paragraph 5.7. Defendant denies the allegations
2 in sentence six of Paragraph 5.7.

3 5.8 Defendant admits the excerpted quote in paragraph 5.8 appears in
4 Devlin's e-mail, but Defendant denies the allegations in paragraph 5.8 to the extent
5 they mischaracterize the contents of the e-mail. Defendant denies the remaining
6 allegations in Paragraph 5.8.

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8 5.9 Defendant admits that some recipients of Devlin's email reported the
9 email to their superiors. Defendant denies the remaining allegations in sentence one of
10 Paragraph 5.9. Defendant admits that Devlin's email was reported up the chain of
11 command from the Seattle Field Division Special Agent in Charge, to the Deputy
12 Assistant Director, the Assistant Director, and the Associate Deputy Director.
13 Defendant denies the remaining allegations in sentence two of Paragraph 5.9.
14 Defendant admits sentence three of Paragraph 5.9. Defendant denies the allegations in
15 sentences four, five and six of Paragraph 5.9.

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17 5.10 Defendant denies the allegations in Paragraph 5.10.

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19 5.11 Defendant admits that ATF 2130.3A, Harassment in the Workplace,
20 Section 7, Subparagraph b, describes the roles and responsibilities of supervisors and
21 managers with respect to allegations of harassment in the workplace. Defendant
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1 denies the allegations in Paragraph 5.11 to the extent Plaintiff has mischaracterized
2 the content of the ATF 2130.3A.

3 5.12 Defendant denies the allegations in Paragraph 5.12.

4 5.13 Defendant admits that Pleasants referred Devlin's email to IAD.
5 Defendant denies the allegations in sentence one of Paragraph 5.13 to the extent
6 Plaintiff has mischaracterized the content of the document. Defendant denies all
7 remaining allegations in sentence one of Paragraph 5.13. Defendant denies the
8 allegations in sentence two of Paragraph 5.13. Defendant admits that IAD referred the
9 matter to management for action. Defendant denies all remaining allegations in
10 sentence three of Paragraph 5.13. Defendant denies the allegations in sentences four
11 and five of Paragraph 5.13.
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13 5.14 Defendant denies the allegations in sentence one of Paragraph 5.14.
14 Defendant denies the allegations in sentences two, three and four of Paragraph 5.14.
15 Defendant admits the allegations in sentences five and six of Paragraph 5.14.
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17 5.15 Defendant admits Plaintiff previously filed a lawsuit. Defendant admits
18 Devlin was deposed during Plaintiff's previous lawsuit. Defendant denies the
19 allegations in sentences one and two of Paragraph 5.15 to the extent that Plaintiff has
20 mischaracterized the content of the documents. Defendant denies the allegations in
21 sentence three of Paragraph 5.15.
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1 5.16 Defendant admits that in late April 2016, Plaintiff was asked to serve as
2 the acting Resident Agent in Charge in the Eugene, Oregon Field Office. Defendant
3 admits Devlin told two Assistant United States Attorneys that Plaintiff was a “train
4 wreck.” Defendant denies the remaining allegations in Paragraph 5.16.
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6 5.17 Defendant admits Plaintiff is African-American and Devlin is Caucasian,
7 Defendant denies the remaining allegations of sentence one and denies sentence two
8 of Paragraph 5.17. Defendant admits sentence three of Paragraph 5.17. Defendant
9 denies the allegations in sentence four of Paragraph 5.17. Defendant denies the
10 remaining allegations Paragraph 5.17.
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12 5.17.1 Defendant denies the allegations in Paragraph 5.17.1.

13 5.17.2 Defendant denies the allegations in Paragraph 5.17.2.

14 5.17.3 Defendant denies the allegations in Paragraph 5.17.3.

15 5.17.4 Defendant admits Devlin sent emails to agents under his
16 supervision to include Plaintiff. The emails are in writing and are the best and most
17 complete representation of their contents. Defendant denies the allegations to the
18 extent that Plaintiff has mischaracterized the content of the documents and denies the
19 remaining allegations in Paragraph 5.17.4.
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1 5.17.5 Defendant admits only that Devlin at one point stated that he has a
2 tattoo on his upper arm that he obtained while working undercover. Defendant denies
3 all other allegations in Paragraph 5.17.5.

4 5.17.6 Defendant denies the allegations in Paragraph 5.17.6.

5 5.18 Defendant denies the allegations in sentences one, two and three of
6 Paragraph 5.18. Defendant lacks knowledge or information sufficient to form a belief
7 as to the truth of the allegations in sentences four and five of Paragraph 5.18.

8 Responding to sentence 6, Defendant admits Plaintiff advised Nunez of allegations
9 regarding Devlin in her May 3, 2016 memorandum. Defendant denies all remaining
10 allegations in sentence 6 of Paragraph 5.18.

11 5.19 Defendant denies the allegations in Paragraph 5.19.

12 5.20 Defendant admits that Plaintiff and Devlin had an email exchange, which
13 is in writing and is the best and most complete representation of its contents.

14 Defendant denies all other allegations in Paragraph 5.20.

15 5.21 Defendant admits Plaintiff told Nunez that Devlin was making improper
16 remarks but denies the remaining allegations in sentence one of Paragraph 5.21. The
17 allegations in sentences two and three of Paragraph 5.21 relate to documents that are
18 the best and most complete representation of their contents; Defendant denies the
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1 | allegations to the extent that Plaintiff has mischaracterized the content of the
2 | documents. Defendant denies the remaining allegations in paragraph 5.21.

3 | 5.22 Defendant denies the allegations in Paragraph 5.22.

4 | 5.23 Defendant admits Paragraph 5.23 the extent that Plaintiff submitted a
5 | memorandum dated May 3, 2016, to the Special Agent in Charge, Seattle Field
6 | Division, through the Assistant Special Agent in Charge, Seattle Field Division.
7 | Defendant denies all other allegations in Paragraph 5.23.

8 | 5.24 Defendant admits that at some time after Plaintiff submitted her May 3,
9 | 2016 memorandum, Plaintiff had a conversation with Dawson regarding her concerns.
10 | Defendant denies all other allegations in Paragraph 5.24.

11 | 5.25 Defendant denies the allegations in Paragraph 5.25.

12 | 5.26 Defendant admits only that Dawson and Nunez spoke with Devlin who
13 | confirmed that he wore a “German Eagle SS lightning bolt tattoo” that he received to
14 | work undercover with a white supremacist organization. Defendant denies the
15 | remaining allegations in Paragraph 5.26.

16 | 5.27 Defendant admits Plaintiff had a prior lawsuit. Plaintiff’s prior complaint
17 | is in writing and is the best and most complete representation of its contents.
18 | Defendant denies the allegations in sentence one of Paragraph 5.27 to the extent that

1 Plaintiff has mischaracterized the content of the document. Defendant denies the
2 allegations in sentence two of Paragraph 5.27.

3 5.28 Defendant denies the allegations in Paragraph 5.28.

4 5.29 Defendant admits that Plaintiff had a prior lawsuit. Plaintiff's prior
5 complaint is in writing and is the best and most complete representation of its
6 contents. Defendant denies the allegations in Paragraph 5.29 to the extent that Plaintiff
7 has mischaracterized the content of the document.
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9 5.30 Defendant denies the allegations in Paragraph 5.30.

10 **CLAIMS**

11 6.1 Defendant denies the allegations in Paragraph 6.1.

12 **INJUNCTION ALLEGATIONS**

13 7.1 Defendant denies the allegations in Paragraph 7.1.

14 **REQUEST FOR RELIEF**

15 8.1–8.8 Defendant denies Plaintiff is entitled to the relief requested in paragraphs
16 8.1 to 8.8.
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18 **GENERAL DENIAL**

19 All allegations not specifically admitted are denied.
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AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint, either in whole or part, fails to state a claim for which relief may be granted.

2. Plaintiff has waived and/or released her claims in the Complaint through her prior complaint, lawsuit, and/or settlement agreement.

3. Plaintiff is estopped from making the claims alleged in the Complaint.

4. Plaintiff's claims may be barred by res judicata and/or collateral estoppel.

5. The Court lacks subject matter jurisdiction over some or all of Plaintiff's claims.

6. Plaintiff failed to exhaust her administrative remedies for some or all of her claims.

7. Defendant's actions, about which Plaintiff now complains, were a just and proper exercise of management discretion, undertaken for fair and honest reasons in good faith under the circumstances then existing.

8. Without admitting that any adverse employment action was taken against Plaintiff, any adverse employment action or decisions by Defendant in connection with Plaintiff's employment was based on legitimate, non-discriminatory and non-retaliatory reasons.

1 9. Defendant's actions were taken for non-pretextual reasons and would
2 have been taken regardless of any protected conduct.

3 10. Defendant exercised reasonable care to prevent and correct any harassing
4 behavior. Defendant exercised reasonable care to prevent and promptly correct any
5 workplace discrimination, but Plaintiff unreasonably failed to take advantage of the
6 corrective or complaint procedures offered by Defendant.

7 11. Plaintiff has no damages. To the extent damages exists, Plaintiff failed to
8 mitigate damages.

9 12. Plaintiff may not recover punitive damages from Defendant. *See* 42
10 U.S.C. § 1981a(b)(1).

11 13. To the extent Plaintiff is entitled to damages, which Defendant denies,
12 Plaintiff's damages are limited to the statutorily delineated amounts set forth in Title
13 VII. *See* 42 U.S.C. § 2000-e, *et seq.*

14 14. Plaintiff cannot sue her employer for emotional harm, either intentional
15 or negligent, as such actions sound in tort and all tort causes of actions by an
16 employee against her employer are barred by the Federal Employees' Compensation
17 Act (FECA).

18 WHEREFORE, having fully answered Plaintiff's Complaint and alleging
19 certain affirmative and other defenses, Defendant prays that Plaintiff's Complaint be
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1 dismissed with prejudice, that Plaintiff take nothing by her Complaint, and that the
2 Court grants any further relief it deems just and equitable.

3 DATED this 8th day of February 2021.

4 LEIF M. JOHNSON
5 Acting United States Attorney

6
7 By: s/ Mark Steger Smith
8 By: s/ Randy J. Tanner

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21 28 U.S.C. § 515
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